COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In the Matter of the Interconnection Agreement Negotiations Between AT&T COMMUNICATIONS OF NEW ENGLAND, INC., and NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, Pursuant to 47 U.S.C. § 252.

D.P.U. 96-80/81

OPPOSITION BY AT&T COMMUNICATIONS OF NEW ENGLAND, INC.,

TO BELL ATLANTIC'S "MOTION FOR RECONSIDERATION AND CLARIFICATION" OF THE DEPARTMENT'S PHASE 4-L ORDER

Introduction.

AT&T Communications of New England, Inc. ("AT&T") opposes the Motion for Reconsideration and Clarification filed by Bell Atlantic-Massachusetts ("BA-MA") regarding the Department's October 14, 1999 Phase 4-L Order. Neither prong of BA-MA's motion for reconsideration has any merit.

First, the Department should reject BA-MA's attempt to revive the portion of its proposed Operations Support Systems ("OSS") charges for the so-called Customer Service Record Retrieval Service ("CSR") and Call Usage Detail Service ("CUDS") charges. The proposed CSR and CUDS charges were part of the OSS cost study rejected by the Department and were explicitly identified by the Department in its Order as part of the rejected OSS study. Furthermore, the Department's finding that BA-MA is not entitled to impose separate OSS charges because its forward-looking computer costs are fully reflected in its recurring charges for unbundled network elements - and, thus, that separate OSS charges would constitute improper double counting of such costs - applies with full force to the proposed charges for CSR and CUDS.

Second, BA-MA's request that application of non-recurring charges be dealt with solely in D.T.E. 98-57 also should be rejected. The most efficient way for the Department to proceed is as to address the issue in connection with BA-MA's compliance filing, as the Department specified in its Phase 4-L Order. With evidentiary hearings beginning in several weeks in Docket 98-57, it is too late to transfer these issues from this docket to the 98-57 proceedings. Furthermore, because BA-MA has steadfastly refused to include a UNE-P component in its proposed Tariff No. 17, the question of how final non-recurring charges will in fact be applied cannot be resolved in Docket 98-57, and must instead be settled in the Consolidated Arbitrations proceeding.

Argument.

I. The Department's Denial of the CSR and CUDS Charges Proposed in BA-MA's OSS Study Was Not the Result of "Mistake or Inadvertence."

BA-MA's effort to salvage a portion of its OSS cost study on grounds that the Department's ruling was the result of mistake or inadvertence is without merit. BA-MA incorrectly asserts that the "Department did not specifically address" the proposed CSR and CUDS charges in the Phase 4-L Order, and that the Department could not have intended to reject the proposed CSR and CUDS charges because they are purportedly "not …related to the OSS elements that were the principal subject of the Phase 4-L Order." BA-MA's Motion for Reconsideration at 3. Id. In fact, however, the CSR and CUDS charges were not overlooked by the Department in its Order, and suffer from the same defects as the rest of the OSS study that was properly rejected by the Department.

A. The Department Did Not Overlook the Proposed CSR and CUDS Charges Included in the BA-MA OSS Cost Study.

In the Phase 4-L Order, the Department explicitly recognized that the proposed CSR and CUDS charges are part of the OSS cost study rejected by the Department. Phase 4-L Order at 41-42. Therefore, BA-MA's suggestion that the charges were not approved only because the Department failed to consider them is without merit. Indeed, even if the Department had not mentioned the CSR or CUDS charges at all in its decision, that would not demonstrate any mistake or inadvertence. The Department rejected the OSS cost study in its entirety after identifying fundamental concerns that apply to the CSR and CUDS charges as well as to the rest of the OSS cost study. (See Section I.B, below.)

Nor is there any merit to BA-MA's suggestion that the proposed CSR and CUDS charges should be viewed as separate and distinct from the rest of its OSS cost study. BA-MA claims that the CSR and CUDS charges are supported by cost studies that are "entirely separate" from the OSS cost study rejected by the Department. BA-MA's Motion for Reconsideration at 3. In fact, however, BA-MA presented a single cost study that was supported by the interrelated testimonies of Mr. Kelly, Mr. Minion and Mr. Orosz. As Mr. Kelly explained:

The cost information associated with the projects which I describe were provided as inputs to Mr. Minion's Cost Study. He adds loadings for benefits and payroll taxes, adjusts those expenses in time to bring all costs to a 1996 time frame, levelizes those costs over a seven year recovery period and assigns them to the categories of transaction, per account and ongoing. He further provides capital costs, and other added costs for Service Management Systems Line Information Database, call usage detail and customer record retrieval. Mr. Orosz then develops rates for the elements in each of those categories using the cost information provided by Mr. Minion and demand developed in his testimony.

Kelly Direct, Ex. BA-OSS-1 at 3 (emphasis added).

That the CSR and CUDS proposed charges indeed are part of the OSS cost study rejected by the Department is confirmed by the summary of OSS-related charges submitted by BA-MA. In that summary, the CSR and CUDS charges can be found, not as separately segregated charges, but almost directly in the middle of the list without any distinguishing notation.(1) Exh. BA-OSS-5 at Workpaper Part I.

B. The Reasons Identified By the Department for Rejecting the OSS Cost Study Apply With Full Force to the CSR and CUDS Charges.

One of the key reasons why the Department rejected BA-MA's proposed OSS charges is that Bell Atlantic's proposal would have resulted in the double-counting of costs, since the forward-looking cost of BA-MA's computer operations and OSSs is already reflected in the joint and common cost factors used to develop the recurring UNE

rates and Bell Atlantic's resale rates. Phase 4-L Order at 47-49. This finding applies with equal force to the CSR and CUDS charges. According to BA-MA, the proposed CSR and CUDS charges reflect computer processing costs incurred in connection with providing resellers and UNE purchasers with access to customer information through the BA-MA OSS. See Bell Atlantic's Motion for Reconsideration at 4. The CSR charges are designed to recover the cost of additional computer memory required to process CSRs (not the cost of actually processing the record requests). Minion Direct, Ex. BA-OSS-2 at 30. The CUDS charges similarly reflect the cost of data processing requirements and transmission costs associated with providing resellers and CLECs with usage information by line or phone number. Id. at 32. Because the UNE and resale rates approved by the Department already compensate BA-MA for computer-related costs, it may not attempt to recoup those costs a second time through its spurious CSR or CUDS charges.

Furthermore, in rejecting BA-MA's OSS cost study, the Department also expressed its concern about the rate design that attempted to allocate region-wide costs to CLECs operating in Massachusetts as though they were engaged in service throughout the region. Phase 4-L Order at p. 54. The Department was not prepared to allow BA-MA to assign region-wide costs in individual state ratemaking proceedings and "reward" a state that approves a cost recovery request by allowing it (and not the states that reject the request) to bear the region-wide costs. Id. at 54-55. That is exactly what would happen if the Department permits BA-MA to recover from carriers operating in Massachusetts the cost of adding memory to its region-wide system to accommodate CLEC record requests, through CSR or CUDS. BA-MA's motion for reconsideration of the CRS and CUDS portions of its OSS cost study should be denied.

II. Application of Non-Recurring Charges Should be Addressed in This Docket, Rather Than in Docket 98-57.

In the Phase 4-L Order, the Department states that the question of how non-recurring charges will actually be assessed upon CLECs that order unbundled network elements will be addressed "in the next phase of this proceeding, when Bell Atlantic submits its NRC study compliance filing." Phase 4-L Order at 26-27. This statement could not be clearer. BA-MA nonetheless asks the Department to "clarify" its statement, by which it actually means to ask the Department to strike that statement and instead agree to deal with the issue solely in Docket D.T.E. 98-57.

Bell Atlantic's suggestion is not productive. One of the central issues regarding how BA-MA will apply its non-recurring charges - the appropriate non-recurring charges for the unbundled network elements platform ("UNE-P") - cannot be addressed in D.T.E. 98-57. BA-MA failed (indeed, refused) in D.T.E. 98-57 to include terms and conditions for UNE-P in its Interconnection Tariff (Tariff No. 17), and has repeatedly stressed in response to discovery questions in that docket that "[t]here are no provisions in BA-MA's proposed Tariff No. 17 relating to UNE-P." See e.g., D.T.E. 98-57, Bell Atlantic responses to ATT-BA-4-1, 4-4, 4-5, 4-6.

For this reason, Bell Atlantic's suggestion is also not timely. Evidentiary hearings are scheduled in Docket 98-57 for the week of December 13, 1999, less than a month from now. It is too late to add to that proceeding an additional set of issues - regarding the application of non-recurring charges to UNE-P and, for that matter, UNE-L (the unbundled loop) - after the prefiling of testimony and the discovery process have been completed.

The Department therefore must examine the application of non-recurring charges as they pertain to UNE-P and UNE-L in the next phase of the Consolidated Arbitrations docket. Proper review and understanding of the application of non-recurring charges in the UNE-P context will require an understanding of how such charges are applied to uncombined UNEs, as well. The Consolidated Arbitrations and D.T.E. 98-57 have always been understood to be overlapping proceedings. All of the Department's relevant arbitration decisions issued before the filing of Tariff No. 17 should be (and according to BA-MA, are) incorporated into Tariff No. 17. See generally, Docket D.T.E. 98-57, Bell Atlantic's Responses to ATT-BA 1-7, 1-8, 2-36. Furthermore, BA-MA has represented, and the other parties have understood, that the Department's

subsequent decisions in the Consolidated Arbitrations proceeding on non-recurring charges would also be reflected in Tariff No. 17. See, e.g., Docket D.T.E. 98-57, Bell Atlantic's Responses to ATT-BA 1-9, 2-18, and to DTE-BA 1-23, 2-3.

Issues originally raised in the Consolidated Arbitrations, including the proper application of non-recurring charges, should be resolved in the Consolidated Arbitrations docket. Because a comprehensive review is possible in this docket - including the application of non-recurring charges to UNE-P and UNE-L - the Department should not alter its order that such issues be addressed in the context of BA-MA's compliance filing. There is no reason why the Department's subsequent order in the Consolidated Arbitrations proceeding cannot then be incorporated into Tariff No. 17.(2)

Conducting a review the proper application of BA-MA's non-recurring charges in the Consolidated Arbitrations will not create significant confusion or wasted effort. There will be no confusion, because the parties have expected that the issue would be dealt with in the Consolidated Arbitrations. Nor will any meaningful effort be wasted. BA-MA has offered no testimony whatsoever in Docket 98-57 to explain the application of its non-recurring charges, notwithstanding the fact that AT&T has offered testimony that the application of non-recurring charges under Tariff No. 17 is unclear and inadequate. See D.T.E. 98-57 Direct Testimony of Thomas LoFrisco dated July 26, 1999 ("LoFrisco 98-57 Direct") at 6-7. BA-MA should be required, in connection with the compliance filing mandated in the Phase 4-L Order, to explain the application of its non-recurring charges to CLEC orders for both uncombined and combined UNEs, including UNE-P and UNE-L.(3) It has not done so in its proposed Tariff No. 17, and its proposal that the Department conduct such a review in Docket D.T.E. 98-57 should be rejected.

Conclusion.

For the reasons stated above, the Department should deny BA-MA's motion for partial reconsideration of the Phase 4-L Order.

Respectfully submitted,

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Dated: November ___, 1999.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on November ___, 1999.

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1. 1 The Workpapers submitted by Mr. Orosz all are labeled "Cost Onsets Massachusetts." That designation illustrates just what is being addressed in the OSS cost study and why CSR and CUDS charges properly are viewed as part of the study. BA-MA attempted to recover competition onset costs incurred in making its OSS available to resellers and UNE purchasers and identified its claimed costs in the OSS study. That backdrop reveals the fundamental problem with BA-MA's current attempt to claim that additional investment in computer memory to store customer service records somehow is unrelated to other competition onset OSS investment.

2. 2 Indeed, the proper place to consolidate the Department's review of the application of non-recurring charges is in the Consolidated Arbitrations, not D.T.E. 98-57. Not only would such a procedure permit the examination of the application of NRCs to UNE-P orders together with all other NRC application issues, but it would also be the only procedure consistent with the 1996 Act and the parties' expectations that the Department's decisions regarding non-recurring charges in the Consolidated Arbitrations would be incorporated into Tariff No. 17.

3. 3 BA-MA should not be permitted merely to rely on its June 19, 1998 filing purporting to describe how its non-recurring charges are to be applied. First, it submitted this filing without any supporting testimony and only after its witnesses in the Consolidated Arbitrations had testified. Furthermore, the filing appears similar in certain respects to the provisions of Tariff No. 17 which AT&T witness LoFrisco has testified do not permit a CLEC to determine how BA-MA intends to apply its non-recurring charges. LoFrisco 98-57 Direct, at 6-7. BA-MA has offered no response to Mr. LoFrisco's criticisms. BA-MA should be compelled to file sufficient support for its proposed application of NRC charges, including charges for combined UNEs, in the next phase of the Consolidated Arbitrations docket.